

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7526

Petition of Vermont Community Wind Farm LLC)
for a certificate of public good authorizing the)
installation and operation of a temporary wind)
measurement tower and associated equipment on)
Susie's Peak in Clarendon, Vermont)

Order entered: 8/28/2009

I. INTRODUCTION

This case involves a petition filed by Vermont Community Wind Farm LLC ("Vermont Community Wind") requesting a certificate of public good under 30 V.S.A. § 248(j) to install a temporary wind measurement tower and associated equipment on Susie's Peak in Clarendon, Vermont.

In today's Order, we conclude that the proposed project will be of limited size and scope; the petition does not raise a significant issue with respect to the substantive criteria of 30 V.S.A. § 248; the public interest is satisfied by the procedures authorized by 30 V.S.A. § 248(j); and the proposed project will promote the general good of the state.

II. PROCEDURAL HISTORY

On February 26, 2009, in Docket 7518, Vermont Community Wind filed a petition requesting a certificate of public good under 30 V.S.A. § 248(j) to install three, sixty-meter, temporary wind measurement towers and associated equipment on three sites in Ira, Vermont. Vermont Community Wind is exploring the feasibility of constructing one or more wind generation facilities in this area. The towers and associated equipment will generate data about wind speed and direction, and other factors, that will be used to further evaluate the economics of the possible project.

On March 17, 2009, Vermont Public Service Board ("Board") staff requested additional information on the petition in Docket 7518. On April 23, 2009, Vermont Community Wind filed a modification to its petition and supplemental testimony in response to that request. In that filing, Vermont Community Wind proposed to move, by approximately 600 feet, one of the measurement-tower sites to the town of Clarendon from the Town of Ira.

On May 5, 2009, Vermont Community Wind filed a new petition requesting that the Board proceed with a separate review of the proposed measurement-tower site on Susie's Peak in Clarendon, Vermont.¹ The petition was accompanied by prefiled testimony, proposed findings, and a proposed order pursuant to the requirements of 30 V.S.A. § 248(j).

Notice of the petition was sent on June 11, 2009, to all entities specified in 30 V.S.A. § 248(a)(4)(c) and other interested parties. The notice stated that any party wishing to submit comments as to whether the petition raises a significant issue with respect to the substantive criteria of 30 V.S.A. § 248 needed to file comments with the Board on or before July 13, 2009. A similar notice of the filing was published in the *Rutland Herald* on June 15 and June 22, 2009.

The Board received several public comments on the petition. The Board also received a July 2, 2009, letter from the town of Clarendon. The town of Clarendon raises several concerns with regard to the petition, including whether the proposed tower complies with the town's zoning regulations and possible health and wildlife impacts.

On July 10, 2009, and July 23, 2009, the Vermont Department of Public Service ("Department") and the Agency of Natural Resources ("ANR"), respectively, filed letters stating that the petition does not raise a significant issue with respect to the criteria of Section 248 and a certificate of public good should be issued. ANR commented that the certificate of public good should include the requirement of a pre-construction rare plant inventory verifying that rare plant species are not impacted. ANR indicated that the proposed project should not have a significant impact with respect to other natural resource issues, given Vermont Community Wind's plans to access the tower site through the use of existing all-terrain, logging, or skidder trails.

1. On May 5, 2009, Vermont Community Wind also filed an amended petition requesting that the Board proceed with its review of the two proposed measurement-tower sites (Herrick Mountain and Train Brook) in Ira, Vermont, that the Board addressed in Docket 7518.

On July 24, 2009, Vermont Community Wind filed a letter, supplemental testimony, and exhibits addressing several of the concerns raised by the town of Clarendon, the parties, and members of the public. Vermont Community Wind's filing also included supplemental testimony and an exhibit providing the results of a rare, threatened, or endangered plant species inventory conducted in July 2009.

III. PUBLIC COMMENTS

Request for Public Hearing

Comments regarding the proposed project were filed with the Board by many interested parties in the project area, including the town of Clarendon. Several commenters raised objections to the proposed project and called for a public hearing to address the impacts of the temporary wind measurement tower. Some of these commenters argued that Vermont Community Wind had not conducted a complete evaluation of the substantive criteria of 30 V.S.A. § 248 and § 6086. Specifically, some commenters raised concerns that the petition did not address sufficiently wildlife impacts, especially with regard to rare plant surveys and impacts on bat and bird populations. One commenter contended that Vermont Community Wind's rare plant inventory did not address a rare plant called white-flowered leafcup that was previously found east of Susie's Peak. Other commenters raised concerns that the petition did not address impacts on access roads or address the impacts of tree removal and soil erosion. A few commenters raised objections to the proposed project with regard to visible impacts for property owners and recreational users of the Susie's Peak project area. Other commenters raised concerns about property access in their request for a public hearing.

Discussion

As discussed below in the findings under 10 V.S.A. § 6086(a)(8)(A) related to necessary wildlife and endangered species, the proposed project will not have an adverse impact on rare, threatened or endangered plants. In addition, as discussed below, Vermont Community Wind has sufficiently addressed the issue of property access, and the Board has no jurisdiction to rule upon complaints of trespass. Furthermore, as discussed elsewhere in this Order, the petition has effectively addressed the issues raised with respect to the criteria of Section 248. Therefore,

given that the petition has effectively addressed the 248 criteria and because the comprehensive nature of public comments received during the Section 248(j) process sufficiently addresses the issues, the Board concludes that a public hearing is not necessary.

Vermont Community Wind is seeking approval for a temporary wind measurement tower that will be in place for no more than five years. While measurement towers are necessary precursors for a wind generation facility, the Board's approval of a wind measurement tower is not precedential with regard to any future petition for a wind generation facility. A wind measurement tower gathers data that may show that the wind resource is insufficient. The Board notes that it has denied approval of a petition for a wind generation facility after approval of a temporary wind measurement tower.² Any subsequent request for approval to construct a wind generation facility will be subject to a separate proceeding and will include a public hearing as part of the Section 248 process.

Trespassing and Access to Property

Some commenters raised the issue of trespassing and property access. Commenters reported that Vermont Community Wind has accessed proposed project sites by trespassing on private property without permission. Some commenters questioned whether Vermont Community Wind had obtained lease agreements with private landowners for access to properties in Clarendon in order to install and operate wind measurement equipment.

Discussion

As indicated in finding number 4, below, Vermont Community Wind has entered into a lease agreement with a private landowner for use of the property and access road on Susie's Peak to install and operate the proposed meteorological ("MET") tower. Vermont Community Wind's July 24, 2009, supplemental testimony and exhibits provided copies of its lease agreements and

2. See Docket 6748, Order of 10/4/02, approving a wind measurement tower on East Mountain; Docket 6911, Order of 7/17/06, denying the wind-generating facility proposed for the site.

boundary maps and provides sufficient detail for the Board to review the potential impact under the criteria of Section 248.³

Clarendon Zoning Regulations

The Clarendon Board of Selectmen filed a letter indicating that a majority of the Selectboard are opposed to the proposed MET towers for the following reasons: (1) the proposed project area is zoned residential-agricultural and the proposed towers do not comply with the height restrictions in the town's zoning regulations; (2) concerns regarding health aspects for homes within one-half mile of the proposed tower site; and (3) concerns that the proposed project site is a flyway for bald eagles, a deeryard area, and habitat for other wildlife. The Clarendon Planning Commission filed a letter indicating that it has passed a motion to oppose all MET towers in Clarendon for the following reasons: (1) the proposed project, located in a rural residential and agricultural area, is not compatible with "Future Land Uses" in the Clarendon Town Plan; and (2) the proposed project violates height restrictions in the Clarendon zoning regulations.

Discussion

Section 248(b)(1) requires that the Board give due consideration to recommendations of municipal and regional planning commissions and municipal legislative bodies. However, municipal zoning does not apply to projects reviewed by the Board under Section 248.⁴ Direct application by the town of town zoning ordinances is precluded when the Board exercises jurisdiction under Section 248.⁵ While the Board does give due consideration to the town or regional plan, the Board must analyze the proposed project under all of the Section 248(b) criteria and make a determination as to whether the project promotes the general good of the state.

3. The Board does not have jurisdiction over property disputes, and instead is limited in this proceeding to a review of the proposed project under the Section 248 criteria. It is up to the proposed project petitioner to ensure that it has appropriate legal rights to use planned access routes, and any disputes over those property rights are a matter for the civil courts, not this Board.

4. *In re UPC Vermont Wind, LLC*, 2009 VT 19, ¶ 17.

5. *City of South Burlington v. Vermont Electric Power Co.* (1975) 133 Vt. 438, 344 A.2d 19.

The Clarendon Planning Commission's July 14 letter states that the proposed project exceeds the town's zoning height restrictions and is not compatible with the town plan agricultural and rural residential district where the proposed tower would be located. The town plan indicates that in "this district planned residential developments and land uses that do not remove the potential of the land for agricultural production, such as open space, conservation, and certain forms of outdoor recreation are encouraged." The Clarendon Planning Commission provides no further argument as to how the proposed project unduly interferes with the orderly development of the region and does not reference specific land conservation measures.

Vermont Community Wind is seeking approval for a temporary wind measurement tower that will be in place for no more than five years. As discussed elsewhere in this Order, the proposed tower will occupy a small portion, requiring a clearing of up to one acre, of a large parcel of land managed for forestry purposes. The proposed tower requires no municipal infrastructure or services, and does not limit development of other lands within the region. In addition, while the proposed tower may exceed the height restrictions of the Clarendon zoning regulations, it will be temporary and limited in size and scope.

With regard to the Board of Selectmen's concerns for health and wildlife impacts, as discussed elsewhere in this Order, the petition has effectively addressed the issues raised with respect to the criteria of Section 248. We conclude that the proposed project will not unduly interfere with the orderly development of the region or have adverse impacts on public health and safety or wildlife.

IV. FINDINGS

1. The petitioner is a Vermont company, formed for the purpose of developing a utility-scale wind generation facility in Vermont. The petitioner is a corporation as defined by 30 V.S.A. § 201 and as such is subject to the Board's jurisdiction. White-Hansen pf. at 1.
2. The proposed project includes the installation and operation of one wind measurement tower and associated equipment on a site in Ira, Vermont. The proposed tower will collect wind speed, wind direction, temperature and other meteorological data at several different heights.

The measurements will help determine whether the areas are suited for placement of wind turbines and economically viable for wind power development. White-Hansen pf. at 1-2.

3. The location for the proposed MET tower is a site close to the top of Susie's Peak located at an elevation of approximately 2360 feet above sea level. White-Hansen pf. at 3; exh. PWH-1 at Figures 2 and 10.

4. Vermont Community Wind has entered into a lease agreement with a private landowner for use of the undeveloped property and access road on Susie's Peak to install and operate the proposed MET tower. White-Hansen pf. at 2; White-Hansen supp. pf. at 4; exhs. PWH-4 and PWH-5.

5. The proposed tower will be guyed, made of galvanized steel, 6 to 10 inches in diameter, tubular, and up to 197 feet in height. The equipment to be installed at the site will consist of the tower itself and a variety of meteorological sensors mounted on the tower to measure wind speed, wind direction, air temperature, and other meteorological data. Anemometers and direction sensors will be mounted at several heights on the tower. The use of both heated and unheated anemometers will allow for accurate data collection in all seasons. All the sensors will be connected to an electronic data recorder. White-Hansen pf. at 5-6; exh. PWH-2 at Figures 2 and 3.

6. The data recorder and the connected sensors on the proposed tower will be powered by a rechargeable battery. The batteries will be recharged by a photovoltaic panel mounted on the cover of the data recorder at approximately 10 feet above ground level. White-Hansen pf. at 5-6, 7; exh. PWH-2 at Figure 1.

7. At the proposed tower site, tree cutting of up to one acre will be required for the tower and for guy wires in four directions. The guy wires will be secured with anchors into bedrock at four corners. The proposed tower base is an eight-square-foot steel plate that sits on the ground, secured in place by rods driven through the tower base into the soil. White-Hansen pf. at 6; exh. PWH-2 at Figures 4 and 9.

8. The proposed tower will be assembled in ten-foot sections laid out along the ground. The meteorological sensors, data recording equipment, and guy wires will be attached to the assembled tower sections. The tower will then be winched into a vertical position using a

ginpole and a hydraulic winching system powered from a hydraulic power unit utilizing a gasoline engine. The complete assembly process, attachment of sensors and installation of the towers will take approximately one day. White-Hansen pf. at 6-7; exh. PWH-2 at Figures 5, 6, and 7.

9. Access to the proposed site for construction and routine maintenance will be by four-wheel drive vehicles, all-terrain vehicles, or snowmobiles over existing all-terrain vehicle trails, logging roads, or skidder roads that Vermont Community Wind has authority to travel. Data collection at the proposed tower will occur remotely using a cell-phone system located at the tower data logger to send measurement data once a day to a remote computer. White-Hansen pf. at 7-8; exh. PHW-2 at Figures 8A and 8B; White-Hansen supp. pf. at 4; exhs. PWH-4 and PWH-5.

10. The wind measurement data from the proposed tower site will be collected for up to five years. If the wind resource at the proposed site is found not to be adequate for development of a wind energy project, the tower hardware and associated equipment will be disassembled and removed from the site. Guy anchors will be removed, or will be cut below grade if they prove difficult to remove. The removed tower sites will allow re-vegetation to occur naturally. If the wind source at the proposed sites is found to be adequate for the development of a wind energy project, Vermont Community Wind may apply for certificate of public good, which may include a request to have the proposed MET tower remain as part of the wind project. White-Hansen pf. at 8.

Orderly Development of the Region

[30 V.S.A. § 248(b)(1)]

11. The proposed project will not unduly interfere with the orderly development of the region, with due consideration having been given to the recommendations of the municipal and regional planning commissions, the recommendations of municipal legislative bodies, and the land conservation measures contained in the plan of any affected municipality. This finding is supported by findings 12 through 13, below.

12. The proposed project will be on private land, involve no electricity transmission or distribution, and will have limited visibility. The proposed project is temporary in nature, and is proposed to be removed at the end of five years, unless Vermont Community Wind applies and is granted Board approval for a certificate of public good to develop a wind energy project. White-Hansen pf. at 16.

13. On April 23, 2009, Vermont Community Wind filed a copy of the petition for the proposed project with the Clarendon Selectboard, the Clarendon Planning Commission, and the Rutland Regional Planning Commission. White-Hansen pf. at 8-9.

Discussion

Section 248(b)(1) provides that, before the Board may issue a CPG for an in-state facility, the Board shall find that the facility:

will not unduly interfere with the orderly development of the region with due consideration having been given to the recommendations of the municipal and regional planning commissions, the recommendations of the municipal legislative bodies, and the land conservation measures contained in the plan of any affected municipality.

The Clarendon Planning Commission argues that the proposed project is not consistent with the land conservation measures contained in the town plan because the proposed project exceeds the town's zoning height restrictions and is not compatible with the town plan agricultural and rural residential district. As discussed in the public comments section of this Order, the proposed tower will occupy a small portion of a large parcel of land managed for forestry purposes and does not limit development of other lands within the region. In addition, while the proposed tower may exceed the height restrictions of the Clarendon zoning regulations, it will be temporary and limited in size and scope. Finally, Clarendon has failed to identify specific land conservation measures in the town plan that would be affected by the proposed project.⁶ Therefore, we conclude that the Project will not unduly interfere with the orderly development of the region, and thus satisfies Section 248(b)(1).

6. See, Docket 6860, Order of 1/28/05 at 201-202; *In re UPC Vermont Wind, LLC*, 2009 Vt. 19, ¶ 38.

Need for Present and Future Demand for Service

[30 V.S.A. § 248(b)(2)]

14. The proposed project is not connected to the electrical grid. The proposed project is necessary to accurately estimate the quality of available wind resources and could lead to a future petition for a wind energy project that would be available to provide renewably-produced electricity to users in Vermont and the surrounding region. White-Hansen pf. at 4 and 7.

System Stability and Reliability

[30 V.S.A. § 248(b)(3)]

15. The proposed project would not be connected to the electric system and therefore would not adversely affect system stability and reliability. White-Hansen pf. at 7.

Economic Benefit to the State

[30 V.S.A. § 248(b)(4)]

16. The proposed project is an investment in property in Clarendon, Vermont, and would provide an economic benefit to the State. In addition, the proposed project is a necessary first step toward the development of a possible wind-powered generation project, which, if proposed, permitted and developed, could provide economic benefits to the State and its ratepayers, as that is one of the criteria for approval of such a project. White-Hansen pf. at 2, 4.

**Aesthetics, Historic Sites, Air and Water Purity,
the Natural Environment and Public Health and Safety**

[30 V.S.A. § 248(b)(5)]

17. The project, as proposed, will not have an undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment and public health and safety. This finding is supported by findings 19 through 45, below, which are the criteria specified in 10 V.S.A. §§ 1424(a)(d) and 6086(a)(1)-(8)(a) and (9)(k).

Public Health and Safety

[30 V.S.A. § 248(b)(5)]

18. Construction and maintenance of the proposed tower will not threaten public health or safety. Access to the proposed site is generally limited to hikers and all-terrain vehicles or snowmobiles. Reflective signage warning the proximity of wind measurement equipment will be placed along the side of trails nearby the proposed MET tower, and guy wires will be identified with colorful ribbons or reflective markers. White-Hansen pf. at 9; White-Hansen supp. pf. at 3-4.

Outstanding Resource Waters

[10 V.S.A. § 1424(a)(d)]

19. The proposed project will not be located on or anywhere near any segment of any outstanding resource waters of the State as identified by the Water Resources Board. White-Hansen pf at 10; exh. PWH-1 at 2-3.

Air Pollution

[10 V.S.A. § 6086(a)(1)]

20. The proposed project will not result in undue air pollution and will not produce emissions or noise. White-Hansen pf. at 10.

Water Pollution

[10 V.S.A. § 6086(a)(1)]

21. The proposed project will not result in undue water pollution. This finding is supported by the specific findings under the criteria of 10 V.S.A. §§ 6086(a)(1)(A) through (G), below.

Headwaters

[10 V.S.A. § 6086(a)(1)(A)]

22. The proposed tower site will be located at elevations greater than 1,500 feet, and, therefore, is located within a headwaters region. Given that there are no streams or other surface

waters documented at the proposed tower location, impacts to water quality will be minimal to non-existent. White-Hansen pf. at 10; exh. PWH-1 at 3.

Waste Disposal

[10 V.S.A. § 6086(a)(1)(B)]

23. The proposed project will meet applicable health and environmental conservation regulations regarding the disposal of wastes. Any construction-related debris as a result of the proposed tower will be hauled off-site for disposal. On an ongoing basis, the proposed project will not generate waste. White-Hansen pf. at 11.

Water Conservation

[10 V.S.A. § 6086(a)(1)(C)]

24. The proposed project will not require the use of water. There are no sanitary facilities associated with the proposed project, and no water will be used in connection with the construction and operation of the proposed towers or equipment. White-Hansen pf. at 12.

Floodways

[10 V.S.A. §§ 6086(a)(1)(D)]

25. The proposed project is not located within a floodway or floodway fringe. White-Hansen pf. at 12.

Streams

[10 V.S.A. §§ 6086(a)(1)(E)]

26. The proposed tower site is on or near the top of ridges and not located in close proximity to any streams. Numerous streams are present along existing all-terrain vehicle trails or logging and skidder roads used to access the proposed tower. There is no expected impact on these streams because there is no proposal for upgrading these existing access routes. White-Hansen pf. at 12; exh. PWH-1 at 3.

Shorelines

[10 V.S.A. §§ 6086(a)(1)(F)]

27. The proposed project is not located near a shoreline. White-Hansen pf. at 12.

Wetlands

[10 V.S.A. § 6086(a)(1)(G)]

28. The proposed tower site is not in or adjacent to wetlands identified as significant wetlands. There are wetlands located near the existing trails and roads used to access the proposed tower. There is no expected impact on these wetlands because there is no proposal for upgrading these existing access routes. White-Hansen pf. at 12; exh. PWH-1 at 6.

Sufficiency of Water and Burden on Existing Water Supply

[10 V.S.A. §§ 6086(a)(2)&(3)]

29. The proposed project will not place a burden on the existing water supply. No water will be used in connection with the construction and operation of the proposed tower or equipment. White-Hansen pf. at 12.

Soil Erosion

[10 V.S.A. § 6086(a)(4)]

30. The proposed project will not cause an adverse impact on soil erosion. This finding is supported by findings 32 through 34, below.

31. The proposed project will require limited soil disturbance in order to anchor the tower's base and guy wires. The guy wire anchors will be placed into bedrock; the base of the tower will sit above ground and be secured with rods. The small quantities of disturbed soil will be packed in place on relatively flat surfaces to minimize the potential for any erosion to occur. No other soils will be disturbed for the proposed project. White-Hansen pf. at 11.

32. Access to the proposed site will be by existing all-terrain vehicle trails, or logging and skidder roads. The routes will remain unimproved, and will be used infrequently by persons on foot, and by snowmobiles or all-terrain vehicles that will carry project personnel to the site

during the construction phase. Any access for routine maintenance of the proposed project will be scheduled to avoid wet conditions when runoff or soil erosion is more likely to occur. White-Hansen pf. at 10-11; White-Hansen supp. pf. at 3.

33. The areas to be cleared for the proposed tower site and guy wires will not occur on steep slopes. All felled trees and brush will remain at the site to maximize erosion prevention and sediment control at the proposed tower site. Stumps, bushes, and other bushy ground cover will be left in place. Required tree felling will be scheduled after a dry period, and trees will be felled toward higher ground. White-Hansen supp. pf. at 9-10.

Transportation Systems

[10 V.S.A. § 6086(a)(5)]

34. The proposed project will not cause unreasonable congestion or unsafe conditions with respect to transportation systems. The proposed project will require a small amount of truck traffic around the time of construction to transport construction materials and all-terrain vehicles to the access roads. None of the construction vehicles will be oversized. After construction, only periodic visits by single vehicles will be needed for routine maintenance. White-Hansen pf. at 12-13.

35. Federal Aviation Administration rules do not require lighting of structures less than 200 feet tall. The proposed towers do not exceed this height. White-Hansen pf. at 13.

Educational Services

[10 V.S.A. §§ 6086(a)(6)]

36. The proposed project will not cause an unreasonable burden on educational services. Vermont Community Wind will maintain and monitor the proposed towers with existing employees and no new employees will be added to the region. White-Hansen pf. at 13.

Municipal Services

[10 V.S.A. §§ 6086(a)(7)]

37. The proposed project will not cause an unreasonable burden on municipal services. The proposed project will not require the town of Clarendon to provide or expand governmental services. White-Hansen pf. at 13.

**Aesthetics, Historic Sites
and Rare and Irreplaceable Natural Areas**

[10 V.S.A. § 6086(a)(8)]

38. The proposed project will not have an undue adverse impact on the scenic or natural beauty, aesthetics, historic sites, or rare and irreplaceable natural areas. This finding is supported by findings 40 through 45, below.

39. The proposed MET tower will be placed in an undeveloped area along a ridgeline. The tower will have no lights and no visibly moving parts. Although the tower portion above the tree canopy will be visible, the steel tubular MET tower will be only 6 to 10 inches in diameter, slender enough that from more than one or two miles away it will be difficult to distinguish against the sky. The weathered galvanized tubing and gray wire used for the proposed tower will blend well with either blue-sky or cloudy-sky backgrounds. White-Hansen pf. at 6 and 14-15.

40. The tree-clearing associated with the proposed MET tower installation will be limited to one acre or less. The area surrounding the proposed site is forested land that has been logged for many years. There are no improved roads to or on the proposed site. White-Hansen pf. at 6; White-Hansen supp. pf. at 3.

41. Most of the public views of the mountain where the tower is proposed to be installed are from more than one mile away. The proposed tower will be seen from very few, if any, locations frequented by members of the public. White-Hansen pf. at 15; White-Hansen supp. pf. at 4.

42. Vermont Community Wind is proposing to remove the tower five years after the issuance of a certificate of public good. White-Hansen pf. at 15.

43. The proposed project will not directly impact any eligible or listed historic buildings. There are no known archaeological resources in the area and the proposed project involves only a limited and temporary soil disturbance. White-Hansen pf. at 14.

44. The proposed project will not have an undue adverse effect on rare or irreplaceable natural areas. Both Northern Hardwood Forest and Red Spruce Rocky Ridge Forest exist in the proposed project area. Northern Hardwood Forest is a large, matrix-forming community type and the less than one-acre clearing proposed for the project will not cause an undue adverse impact on this community. The Red Spruce Rocky Ridge Forest is a community type found in small to large patches and the proposed project clearing on the edge of this community will not pose a threat to the integrity of the community. White-Hansen pf. at 15; exh. PWH-1 at 3-6.

Discussion

Some of the public comments filed raised the concern that the proposed project will have an undue adverse effect on the aesthetics or scenic and natural beauty of the area. Given the facts of this case, we conclude that the proposed wind measurement tower will not have an adverse effect on the aesthetics of the area because: (1) the tower has a slender profile and will be difficult to see from more than a mile away; (2) most of the locations from which the tower could be seen are more than a mile away; (3) the amount of clearing necessary for installation of the tower will be insignificant; and (4) the tower is only temporary.

Necessary Wildlife Habitat and Endangered Species

[10 V.S.A. § 6086(a)(8)(A)]

45. There are no known wildlife habitats or endangered species in the immediate vicinity of the proposed project that would be adversely impacted by the proposed construction. This finding is supported by findings 47 through 51, below.

46. A July 2009 plant inventory confirms that no state or federally-listed rare, threatened or endangered plant, or plant species considered rare or uncommon by the Vermont Non-Game and Natural Heritage Program were found at the proposed MET tower site. White-Hansen supp. pf. at 1-2; exh. PWH-6.

47. The proposed project will not impact the white-flowered leaf-cup (*Polymnia canadensis*) population that exists on the eastern slope of Susie's Peak approximately one-half mile from the project site. White-Hansen supp. pf. at 2; exh. PWH-6.

48. The proposed project will not adversely impact deer habitat given that the mapped deeryard approximately 2500 feet west of the project area is well-protected by a wooded buffer. White-Hansen supp. pf. at 2; exh. PWH-6.

49. The proposed project area is not within an identified bald eagle flyway and is not designated as a significant or necessary wildlife habitat for any known or threatened or endangered bird species, including the bald eagle. White-Hansen supp. pf. at 2-3; exh. PWH-6.

50. The proposed project will leave cut brush on-site on the floor of the forest and clearing that will provide additional structure to the landscape and benefit a variety of wildlife. White-Hansen supp. pf. at 3; exh. PWH-6.

Discussion

A July 23 letter filed by ANR stated that the certificate of public good should include the requirement of a pre-construction rare plant inventory verifying that rare plant species are not impacted, which is the basis for finding 47. Vermont Community Wind has since conducted a rare-plant inventory, and thus no inventory requirement is needed in the certificate of public good.

Some of the public comments filed raised the concern that the proposed project will have an undue adverse effect on wildlife habitat. ANR indicated that it is not concerned that the proposed project will have a significant impact on wildlife and natural resources, given that Vermont Community Wind plans to access the tower site through the use of existing all-terrain, logging, or skidder trails. Given the minimal amount of clearing proposed for the temporary tower, the lack of concern about impacts on wildlife habitat by the ANR, and the completion of the rare-plant inventory, any impacts on wildlife habitat should be minimal. Therefore, the Board concludes that the proposed project will not adversely impact wildlife habitats or endangered species.

Development Affecting Public Investments

[10 V.S.A. § 6086(a)(9)(K)]

51. The proposed project will not unnecessarily or unreasonably endanger the public or quasi-public investments in any governmental public utility facilities, services, or lands, or materially jeopardize or interfere with the function, efficiency, or safety of the public's use or enjoyment of or access to such facilities, services, or lands. There are no public lands adjacent to the proposed project and there are no public funds invested in the subject property. White-Hansen pf. at 15-16.

Least-Cost Integrated Resource Plan

[30 V.S.A. § 248(b)(6)]

52. Vermont Community Wind is not required to prepare an integrated resource plan pursuant to 30 V.S.A. § 218c.

Compliance with Electric Energy Plan

[30 V.S.A. § 248(b)(7)]

53. The proposed project is consistent with the *Vermont Electric Plan* because it could lead to the development of renewable energy that would help meet Vermont's electricity needs in a manner that is reliable, sustainable, affordable, and environmentally sound. White-Hansen pf. at 16.

54. The Department filed a determination on July 27, 2009, that the proposed project is consistent with the *Vermont Electric Plan*, in accordance with 30 V.S.A. § 202(f).

Outstanding Resource Waters

[30 V.S.A. § 248(b)(8)]

55. The proposed project will not be located on or anywhere near any segment of any outstanding resource waters. White-Hansen pf. at 10; exh. PWH-1 at 2-3.

Existing or Planned Transmission Facilities

[30 V.S.A. § 248(b)(10)]

56. The proposed project is not served by any transmission facilities, existing or planned and this criterion is not applicable to the proposed project. White-Hansen pf. at 7.

V. CONCLUSION

Based upon all of the above evidence, we conclude that the proposed project will be of limited size and scope; the petition does not raise a significant issue with respect to the substantive criteria of 30 V.S.A. § 248; the public interest is satisfied by the procedures authorized by 30 V.S.A. § 248(j); and the proposed project will promote the general good of the state.

VI. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The proposed installation and operation of a temporary wind measurement tower and associated equipment by Vermont Community Wind Farm LLC on the site of Susie's Peak in Clarendon, Vermont, will promote the general good of the State of Vermont in accordance with 30 V.S.A. Section 248, and a certificate of public good to that effect shall be issued.
2. Construction shall be in accordance with the plans as submitted in these proceedings. Any material deviation from these plans must be approved by the Board.
3. Vermont Community Wind Farm LLC shall remove the wind measurement tower and associated equipment within five years of the date of the certificate of public good in this docket.
4. All construction activities by Vermont Community Wind Farm LLC shall employ appropriate erosion prevention and sediment control measures.
5. Motorized vehicles (all-terrain-vehicles or snowmobiles) may be used to access the site only by existing all-terrain vehicle trails, or logging and skidder roads which Vermont

Community Wind LLC has authority to travel. Vermont Community Wind Farm LLC shall not improve the access routes nor cause them to be improved, and any access for routine maintenance for the proposed project shall be scheduled to avoid wet conditions when runoff or soil erosion is more likely to occur.

Dated at Montpelier, Vermont this 28th day of August, 2009.

<u>s/James Volz</u>)	
)	
)	PUBLIC SERVICE
<u>s/David C. Coen</u>)	
)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: August 28, 2009

ATTEST: s/Susan M. Hudson
Clerk of the Board

Notice to Readers: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.